

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Petition for Declaratory Ruling of)	CC Docket No. 01-77
Sections 251(b)(4) and 224(f)(1) by the)	
Coalition of Competitive Fiber Providers)	

COMMENTS OF THE
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association (“CompTel”)¹ submits these comments in response to the Public Notice issued by the Federal Communications Commission (“FCC” or “Commission”) on March 22, 2001 soliciting comments concerning the above-captioned Petition for Declaratory Ruling (“Petition”) filed by the Coalition of Competitive Fiber Providers (“Coalition” or “CCFP”) on March 15, 2001.² As all of the carrier members of the CCFP are also CompTel member companies, CompTel has a strong interest in the outcome of this proceeding. Thus, CompTel files these comments in support of the CCFP’s Petition and urges the Commission to expeditiously grant this Petition.

The CCFP asks the Commission to determine that competitive fiber transport providers, under an interpretation of Sections 251(b)(4) and 224(f)(1) of the

¹ With approximately 300 members, CompTel is the leading industry association representing competitive telecommunications carriers and their suppliers. CompTel’s member companies include the nation’s leading providers of competitive local exchange services and span the full range of entry strategies and options. It is CompTel’s fundamental policy mandate to see that competitive opportunity is maximized for *all* its members, both today and in the future.

² Public Notice, Federal Communications Commission, DA 01-728, *Pleading Cycle Established For Comments On Petition Of Coalition Of Competitive Fiber Providers For Declaratory Ruling Of Sections 251(b)(4) And 224(f)(1)*, CC Docket No. 01-77, released March 22, 2001.

Communications Act, have an independent right, notwithstanding Section 251(c)(6), to access ILEC central office (“CO”) wiring and transmission facilities. The CCFP, among other things, also asks the Commission to determine that, pursuant to the above-mentioned statutory provisions, all carriers rightfully accessing ILEC CO wiring, rights-of-ways, and collocation under Section 251(c)(6) have the ability to use the ILEC CO transmission pathways to interconnect with any other carrier.

CompTel supports both of these requests for interpretation, as well as the other requests in the Petition, and believes that the interpretations proposed by the CCFP are eminently reasonable, if not the most reasonable, constructions of the pertinent statutory provisions. Moreover, CompTel believes the interpretations of Sections 251(b)(4) and 224(f)(1) that the CCFP asks the Commission to adopt are the only interpretations of these provisions that would advance the public policy goals of the Act by encouraging the build out of competitive local telecommunications networks.

I. Sections 224(f)(1) and 251(b)(4) Provide an Additional, Independent Basis Under Which Competitive Fiber Transport Providers and CLECs Can Access ILEC CO Transmission Facilities

While CompTel believes that competitive fiber transport providers certainly have the right, under any reasonable construction of Section 251(c)(6), to collocate and interconnect with other CLECs in the ILEC CO,³ CompTel also believes that the CCFP

³ CompTel has explained in the Commission’s “Collocation Remand” proceeding that transport providers must be allowed to collocate in the ILEC CO under Section 251(c)(6) and to interconnect with other CLECs in the ILEC CO. Such interconnection with another CLEC would constitute the indirect accessing of ILEC UNEs. See Comments of CompTel, et. al., in CC Docket Nos. 96-98 and 98-147, filed October 12, 2000, at pp.43-53. Additionally, if the CLEC has leased firm, committed capacity on the competitive fiber network, then the competitive provider’s network facilities are more appropriately considered part of the collocating CLEC’s network. For the Commission to conclude otherwise would be to erroneously determine that Congress had a preference for vertical integration through acquisition rather than integration through contract. Thus, a CLEC

has identified another valuable legal basis for this right, which may accommodate a greater variety of competitive entry strategies and wholesale service alternatives. As the CCFP notes, this independent legal basis for accessing ILEC-owned wiring, transmission facilities and in-building rights-of-way is not inconsistent with the overlapping application of Section 251(c)(6) of the Act.⁴ Moreover, unless the Commission adopts the interpretation of Sections 224(f)(1) and 251(b)(4) urged by the CCFP, it would be impossible for the Commission to retain a consistent application, and interpretation, of these statutory provisions.

Section 251(b)(4) provides that each local exchange carrier has “[t]he duty to afford access to [its] poles, ducts, conduits and rights-of-way . . . on rates terms and conditions that are consistent with section 224.”⁵ Similarly, Section 224(f)(1) states “[a] utility shall provide . . . a telecommunications carrier with nondiscriminatory access to any pole duct, conduit, or right-of-way owned or controlled by it.”⁶ The Commission recently interpreted Section 224(f)(1) to require ILECs, as “utilities,” to provide access to all parts of their transmission and distribution networks that they own or control within private multi-tenant environments.⁷

which owns and controls its own fiber transport network and provides service to end-users using ILEC UNEs cannot be treated more favorably under the statute than a CLEC who provides service to end-users using ILEC UNEs, but obtains dedicated transport under an agreement with a third-party vendor, such as one of the petitioning competitive fiber providers.

⁴ See Petition, pp. 6-7.

⁴ 47 U.S.C. § 251(b)(4).

⁶ 47 U.S.C. § 224(f)(1).

⁷ *Promotion of Competitive Networks in Local Telecommunications, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Review of Sections 68.104 and 68.103 of the Commissions Rules*, WT Docket No. 99-217, CC Dkt Nos. 96-98 and 88-57; First Report and Order and FNPRM in WT Docket No. 99-217, Fifth Report and Order in CC Docket No. 96-98 and Fourth Report and Order in CC

The present Petition of the CCFP asks merely for an interpretation well within the Commission's prior holding. Indeed, the legal argument of Petitioners could not be clearer, or more straightforward. The CCFP is simply asking the Commission to clarify that, having already determined that transmission and distribution rights-of-way in private buildings that are under the ILEC's ownership or control are subject to Section 224(f)(1), ILEC wiring, ducts, and conduits within *ILEC-owned and controlled buildings* is similarly subject to Section 224(f)(1).

Indeed, if the Commission's Rules are to be interpreted flexibly, as broadly-written rules should be, CompTel believes that the Commission's present definition of "conduit" is sufficient to encompass wiring and transmission paths within ILEC COs. The Commission's current definition of "conduit" is "a structure containing one or more ducts . . . in which cables or wires may be installed."⁸ Thus, under a reasonable reading of the Commission's existing rules, an ILEC central office could not be excluded from the Commission's current definition of "conduit." Moreover, such an interpretation is fully consistent with Commission precedent favoring an interpretation of Section 224(f)(1) that facilitates the open, efficient interconnection of competitive networks.

II. The Requested Interpretation Is Consistent With Commission Policy and Furthers the Procompetitive Goals of the Act

Not only is the interpretation of Sections 224(f)(1) and 251(b)(4) in accord with the plain language of the statute as well as existing Commission rules and legal precedent, but the legal interpretation urged by the CCFP is also fully consistent with the Commission's policies and the goals of Congress to advance telecommunications

Docket No. 88-57, FCC 00-377 (Rel. Oct. 25, 2000), paras. 76-84. ("Competitive Networks Order")

⁸ 47 C.F.R. § 1.402(i).

competition in all markets.⁹ By allowing competitive fiber providers to access the rights-of-way, wiring, and transmission facilities in ILEC central offices, the Commission will promote the efficient and timely deployment of alternative telecommunications networks. The ILEC transmission and distribution facilities located within the ILEC central office are truly the “bottleneck” facilities of all bottleneck facilities. Indeed, Congress deemed access to these facilities so critical to a competitor’s ability to compete with the ILEC for local exchange customers that the parameters of central office access were made separate statutory obligations under Section 251(c) of the Act.

However, access to the ILEC central office is no less fundamental to wholesale competition (for the critical inputs of local exchange service) than it is for retail local exchange competition. Unless competitive fiber providers are able to access their primary customers, CLECs, at the source of the competitive demand for their service, these fiber providers will have less incentive to deploy alternative networks. The incentives for competitive fiber deployment will be no less impacted if ILECs are allowed to artificially restrict access to wholesale customers than if they were allowed to decide when, how, and which end-users will have access to competitive alternatives. This fact, as Petitioners frequently note, did not go unrecognized by Congress, but is the indisputable, and compelling, policy basis supporting the legal interpretation sought in this Petition.

Conclusion

For the foregoing reasons, CompTel urges the Commission to completely and expeditiously grant the Petition of the Coalition of Competitive Fiber Providers. Competitive providers of wholesale telecommunications inputs must be able to access

⁹ Petition, pp. 7-8.

bottleneck ILEC rights-of-way, wherever such rights-of-way are located, in order to address their potential wholesale customers. Similarly, carriers collocated in the ILEC CO to interconnect with the ILEC, or access ILEC UNEs, must have access to all of the transmission paths, wiring, rights-of-way, and distribution facilities in the ILEC central office in order to interconnect with other carriers accessing those same necessary rights-of-way. Only through the interpretation requested by the competitive fiber providers will the Commission be able to realize a robust competitive wholesale network which, in turn, will complement and support nascent, but fragile, competitive retail networks.

Respectfully submitted,

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